IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 226 OF 2007
WITH
CIVIL APPLICATION NO. 472 OF 2007

Shri Annappa Vithoba Sutar and ors. ..Appellants

Vs.

Shri Dagadu Bandu Sutar and ors. ..Respondents

Mr. Amit Borkar for appellants.
Mrs. P.U. Badadare i/by N.D. Yelkar for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : April 30, 2007.

P.C.:

1. Heard Mr. Borkar the learned counsel for the appellants who were impleaded as defendants in RCS No. 277 of 1996. The suit was decreed by the learned Joint Civil Judge, J.D. at Ichalkaranji vide his judgment and order dated 10/5/2005 and challenge to the same in Regular Civil Appeal No. 258 of 2005 also failed as pr the judgment and order dated 16/2/2007 passed by the learned Additional District Judge, Ichalkaranji.

2. The suit property was House No. 2148 admeasuring about 687.5 sq.ft. and located within the Municipal limits of Ichalkaranji (originally at village Kabnoor). The plaintiffs contended that the said suit house was purchased by the father of plaintiff nos.1 to 3 and 5 and husband of plaintiff no.4, namely, Bandu Vithoba Sutar on 19/8/1969 and he constructed the suit house on the said plot of land in the year 1971-72. It was further contended that two rooms of the suit house were given to the defendant no.1 as a licensee. Bandu died on 12/5/1995 and thereafter the defendant no.1 had obtained electric connection in the rooms under his occupation and without the consent of the plaintiffs. It was also alleged that the defendant no.1 had entered his name to the suit property. In R.T.S. No.39 of 1995 the plaintiffs' names were entered in the suit property as owners and defendant no.1 had filed RCS No. 34 of 1996 which consequently came to be dismissed. The defendants had two fold defence. At the first instance they claimed that the suit house was not an exclusive property of Bandu and the same was purchased from the joint family income. Secondly, it was

contended that two rooms occupied by defendant no.1 and his family were purchased from Bandu by an agreement signed on or about 19/3/1969 for a consideration of Rs.1000/-.

3. Both the courts below discarded these documents at Exh.44 and Exh. 53. The Lower Appellate Court examined the reasoning given by the trial court on the basis of the evidence adduced before the trial court and more particularly on the point whether the plaintiffs have discharged their burden to prove that the suit property was the self acquired property of Bandu. It considered the 7x12 extracts at Exhs.48 to 50 and noted that the property at Ardal was a joint family property and there was hardly any income from the same. The other extract at Exh.51 indicated that the family of Vithoba Sutar who had four brothers including Bandu and defendant no.1 had a house at Uttur and it did not pay any income to the family. From these two properties it was noted that there was no resource to contribute to the sale deed of 1969 from the family income and, therefore, it was accepted that Bandu purchased the suit property from his own

income. The Lower Appellate Court considered the depositions of defendant no.1 as well as Machhindra Padvale and noted that there was nothing in their testimony in support of the contentions that the plot admeasuring 600 sq.ft. was purchased from the joint family income.

4. So far as the document relied upon by the defendants is concerned, it was not registered and no witnesses were examined in support of the same. This alternative submission that the suit two rooms were sold by Bandu to defendant no.1 could not be proved. Mr.Borkar submitted that such a document exists and was in possession of the plaintiffs and they are guilty of suppressing the said fact. This submission cannot be accepted unless some witnesses were examined by the defendants to prove that there was a sale transaction between Bandu and defendant no.1 and the suit two rooms were sold to defendant no.1 by Bandu in the year 1969 or thereafter till he was alive.

5. Under these circumstances, the fact finding exercise done by both the courts below to hold that

the defendants were the licensees and it was the self acquired property of Bandu does not raise any substantial questions of law for consideration of this court and hence the appeal fails at the threshold.

6. The appeal is dismissed.

7. Civil Application No. 472 of 2007 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)